

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

RED BARN MOTORS, INC., PLATINUM
MOTORS, INC., and MATTINGLY AUTO
SALES, INC., individually and on behalf of
other members of the general public similarly
situated,

Plaintiffs,

v.

NEXTGEAR CAPITAL, INC. f/k/a DEALER
SERVICES CORPORATION,

Defendant.

Case No. 1:14-cv-01589-TWP-DLP

DECLARATION OF MARK BOHANNON

1. I am over twenty-one years of age, of sound mind, and competent to make this declaration. This Declaration is based on my own personal knowledge.

2. I currently serve as a Director of Performance Management for Defendant NextGear Capital, Inc. (“NextGear”) and have held that or a similar position for roughly five years. I held an account executive position in 2013 and earlier when NextGear was known as “Dealer Services Corporation” or “DSC.” In those roles, I have been responsible for signing up new dealer borrowers, monitoring their floor plan performance, and responding to their questions and concerns about their floor plan.

3. I have been the account representative for many dealers that signed with DSC before August 2013, who I understand would be class members in this case. Some of those dealers continue with us now under a newer NextGear contract; some do not.

4. In 2013 and earlier, I answered many questions from dealers regarding when interest would begin to accrue on their floor planned units. Many of those questions came up after the dealer had signed a contract and started doing business with DSC. Sometimes, in their account statements with us, the dealers would see they were charged interest from the date of sale even though they expected it to run from a later date. Based on those questions, I also began to incorporate the issue into our contract closings.

5. In such discussions I told dealers the interest clock starts from the date of sale on most auction purchases, regardless of when we paid the auctions, because DSC had already guaranteed funds to the auction. These questions still arise now, and I answer similarly.

6. I did not keep records on the content of such conversations, but I am confident that it came up regularly in closings and dozens of times post-closing before August 2013.

7. Based on other general discussions I had with dealers, auctions, and colleagues, and my experience in the industry, many of our dealers understood that interest began to run from the auction date regardless of when DSC paid the auction, whether I specifically discussed it with them or not. I believe it is the industry standard for floor planners.

8. I am not aware of any dealers I worked with canceling their line of credit with DSC in response to such a conversation about interest, and most continued to borrow from us thereafter.

9. I specifically recall clarifying the interest timing issue for Florida Truck Sales (account number 48719) and Winter Park Auto Exchange (account number 62997).

I declare under penalty of perjury under the laws of the United States that the foregoing is true and accurate to the best of my knowledge.

Executed at SANFORD, FLORIDA this 30th day of April, 2019.



Mark Bohannon